G. R. S. IX-5]

Previous references.

File No. 190

1920.

Serial Nos. /-

(Ct.)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Three.

Part B for April 1921

SUBJECT.

Transfer of the Mysore Sessions Case to the file of the Session Judge, Bangalore

8(2) To the Govt. Advocate,
No. G. 18897 dt. 7.4.21.
States that Govt. consider unnecessary the transfer of the above case

8(3) To the Dist. Magistrate
No. G. 18898 dt. 7.4.21.
Forwards copy of the above with certain observations.

WD 2233—GPB—20,000—14-6-20

1923|

G. R. S. 11) 1920-21

GENERAL AND REVENUE SECRETARIAT.

(45)

NOTES.

File No. 190-20

FILE HEADING.

Transfer of the Mysore Sessions Case No 19 of 1916-17 to the file of the Sessions Judge Bangalore

From

The Govt Advocate in Mysore

No. 289 · Dated 10-3-21 Received 11-3-21

Diary No. 1923 1	Enclos. 4	Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards Bpz of the letter of the Addl Govt Mysore requesting him to move the High Court to transfer the Mysore Sessions Case from the file of the Sessions Judge, Mysore

NOTES AND ORDERS.

to that of the Sessions Judge, Bang and requests Govt sanction may be obtained for the same.

Submitted with a draft for orders

Yes
12/3/21 3rd Member

D.M. 12/3

If Govt sanction may also be prayed 12/3

NOTES—First Sheet.

5279
12.3.21

G. R. S. III-2]

General and Revenue Secretariat. | Cts File No. 190 of 1920.

Serial No.

2) It is not usual for the Court to make for the hearing of a case from the Sessions division where the accused is charged with the commission of the offence of which he is charged and subsequently the Sessions Judge. No such element is present in the case. There is only the fact that the Sessions Judge has expressed an adverse opinion about the merits of the case. If he was not willing to change his opinion & take the case himself & transfer the case to some other Sessions Division. This appears to be the Sessions Judge's attitude & the accused should be given the benefit of the doubt while removing the order acquitting him & transferring

G. R. S. III-2]

General and Revenue Secretariat.

1923

O. C. File No. 190 of 1923.

Serial No.	
4)	Draft submitted Ess 18/3/21 App 213
5)	D Secy D 4. 2/4
2	To The Government Advocate in Mysore No. G. 18897 Dy 7-4-21 States that Govt. consider unnecessary to get the transfer of the ~~case~~ Mysore Sessions case no. 1 of 1916-17 from the file of the Sessions ~~Judge~~ Mysore to the file of the Sessions Judge, Bangalo for reasons mentioned
3	To The District Magistrate, Mysore. No. G. 18898 Dy 7-4-21. Forwards a copy of G.O. noted in Sl 2, and points out that the proper course for him was, not to have written to the Govt. Advocate direct in the matter but to have addressed the Govt. in the 1st instance for instructing the Govt. Advocate to file the necessary application for transfer.

20 APR 1921

NOTE—Contn. sheet.

4

GEN & REV SEC
11 MAR 1921

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190

No. 289
Rec. 4

Office of the Government Advocate in Mysore,
Dated BANGALORE, the 10th March 1921.

66576

From

The Government Advocate in Mysore,
BANGALORE.

To

The Chief Secretary to the Government of
H. H. the Maharaja of Mysore, BANGALORE.

CHIEF SEC
PROTECT
11 MAR 1921

Sir,

In forwarding herewith copy of letter No. R. O. C 1318/J 20-21, dated the 1st March 1921, together with its enclosures (to be returned when done with), received from the District Magistrate of Mysore, requesting me to move the Chief Court, under section 526 of the Criminal Procedure Code, for the transfer of Mysore Sessions Case No. 19 of 1916-17, from the file of the Sessions Judge, Mysore Dn. to that of the Sessions Judge, Bangalore, I have the honor to request that the orders of Government may be kindly obtained in the matter.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

Copy of letter No. ROC 1318/J. 20-21, dated the 1st March 1921, from the District Magistrate, Mysore, to the - Government Advocate in Mysore, Bangalore.

"In forwarding herewith for your reference a copy of the order passed in Criminal Revision Case No. 9 of 1920-21 on the file of the Chief Court, I have the honor to state - that the order of acquittal passed by the Sessions Judge, - (Mr. B. Nagappa) in Mysore Sessions Case No. 19 of 1916-17 (Government Vs. Mada alias Kunda), has been set aside by - the Chief Court who have directed a retrial of the case. - As the Sessions Judge has already formed an opinion in this particular case, he having once accorded permission to the Public Prosecutor to withdraw from the prosecution of the accused, I am of opinion that it is not desirable in the - interests of justice, that it should be tried again by the same Judge. I accordingly request that you may be so good as to move the Chief Court, under section 526, Criminal - Procedure Code, for the transfer of this case from the fil of the Sessions Judge, Mysore, to the Sessions Judge, Banga lore for disposal.

" 2. I also enclose for your informationcopy of the Resume as also copy of Judgment of the Sessions Judge in - the case.

" 3. The case was posted for hearing to the 17th - instant, and on the motion of the Public Prosecutor, an - adjournment was obtained on the ground that steps would be taken to get the case transferred. The case stands posted to the 21st Proximo".

Government Advocate.

In the Chief Court of Lysore at Bangalore.

Wednesday the 15th day of December 1920.

Present

Sir Leslie Miller, K.T., C.S.I., Chief Judge.

&

Mr. Justice R.B.Plumer

Criminal Revision case No.9 of 1920-21.

In the matter of acquittal and release of Lada alias Kunda, accused in Mysore Sessions case No.19 of 1916-17 on the file of the Sessions Judge of Mysore Division, called for on perusal of calender and copy of judgement by Justice R.B.Plumer on 17th October 1920.

(Charge under section 302 Indian Penal Code.)

O R D E R.

In this case the accused was charged by the Committing Magistrate with murdering his father.

He pleaded not guilty to the same charge when framed in the Sessions Court, but the then Sessions Judge (Mr.Hamza Hussein) in the course of the trial found that owing to unsoundness of mind he was incapable of making his defence and procured his commital to the Lunatic Asylum under section 466 of the Criminal Procedure Code. This was in 1916.

In 1920 he was found fit to stand his trial and sent back to be tried. The present Sessions Judge (Mr. B.Nagappa) has found him fit to stand his trial but has allowed the Public Prosecutor to withdraw the case under section 494 and has acquitted the said accused citing section 84 of the Penal Code and directed his release.

That, in our opinion, is an order which is not warranted by the Code.

It does not appear from the record that the accused relied on section 84 of the Penal Code in support of his plea of not guilty, but that is perhaps unimportant; the Sessions Judge is inaccurate in referring to a "Plea of insanity" but we may take it that he was entitled to find that the accused was insane when the offence was committed.

But it is clear from the Code that he must find that on the evidence before him- his finding is to state specifically whether the act charged was committed by the accused or not (section 470) and he cannot take the Public Prosecutor's word for that when the accused has pleaded not guilty without admitting the commission of the act.

The judgement or order in the present case does not contain a specific finding that the act was committed by the accused or that it was not committed by him, but it is clear that the view of the Sessions Judge was that it was committed by him, and to arrive at a finding on that point it was necessary to hear the evidence.

It is clear that section 494 cannot be applied in cases of this kind. The Code provides special procedure for cases in which the accused is insane and that procedure must be applied. The procedure cannot stand along with section 494 and being specially enacted for the particular class of cases it must exclude that section. Persons who have committed crimes while insane are not to be released unconditionally except under section 474 or it may be under other powers conferred upon the Government in any case, but not by the Court.

Even the Committing Magistrate cannot discharge the accused on the ground that he is protected by section 84 of the Penal Code; he is bound to commit him to the Sessions (section 469) and the Public Prosecutor cannot be permitted to do what amounts to the same thing as discharging him.

The power given to the Court is laid down in section 472, in cases where the act is found to have been committed and it may possibly be that if in the opinion of the public prosecutor the evidence does not establish the commission of the act, his powers under section 494 are left in tact, that we need not decide for it is not the case. The Session Judge complains that available evidence to show that the accused was not insane when the act was committed was not put before the Committing Magistrate but nowhere suggests that the act was not committed by the

the accused. He was therefore bound to determine on evidence whether the act was or was not committed as well as the question whether the accused was insane and it may be observed that if he i right in saying that there is available evidence to show that the accused was not insane, it was open to him and to the Public Prosecutor to call witnesses instead of contenting himself with calling in question the completeness and honesty of the investigation."

He must set aside the order of acquittal and release and direct the retrial of the case.

Sd/- Leslie C. Miller,

Chief Judge.

Sd/- R.B.Plumer,

Judge.

" C O P Y "

Sd/- G.Srcenivasa Iyengar,

Registrar.

Copy
in vernacular
H.C. Mysore

In the court of the Sub Division Magistrate,Nanjangud.

This 10th day of April 1917.

Present:-- A.Krsihnaswamy Iyengar Esquire,B.A.,

Sub Division Mggistrate.

Criminal case No.22 of 15-16.

Complainant.		Accused.
Government	Vs.	Mada alias Kunda.

On 7-11-15 F.I.R. under section 302 I.P.C. was received from the Police of the Chamarajanagar Taluk submitting 2 reports of the patel of Santhemarahally and stating that the accused Mada alias Kunda (Kunuda) who was not in his senses for 4 or 5 days killed his father Sotta Honnaiana Madia by hitting him with a pounder while he was asleep in his vanranda on the early morning of 6-11-15.

2. On 18-11-15 a charge sheet was received against the same accused unde rthe same section. The case was tried by Mr.N. Subba Rao and 8 witnesses were examined by him. As the accused feigned madness he was sent to the District Medical Officer,Mysor Division,on 2-12-15 for observation. The District Medical Officer certificate that the accused was insane was received on 12-12-15. To facilitate the trial at Mysore as the accused was there, the case was transferred to the City Magistrate, Mysore. He examined the District Medical Officer on 11-1-16. As he stated that the accused was insane and fit to be sent to the Lunatic Asylum the City Magistrate sent up the case to the District Magistrate,who sent it up for Government for orders. The Government ordered in No.3631-3 Prison 8-15-16 dated 8-3-16 that the accused should be confined in the Lunatic Asylum under section 466(2) of Cr.P.C. The accused was in the Lunatic Asylum till 22-1-17 when he was sent to stand his trial here as the official visitors and the Senior Surgeon were of opinion that he was sane and capable of making his defence.(P.6)

3. Ten witnesses were examined for prosecution. Of theses 1st

1st Mr.Kesavachar ~~XXX~~ is the investigating Officer. 2nd is Patel Puttasamiah who submitted reports of injury and of death of the said Madappa. 3rd is the Sub Assistant Surgeon Mr.Papia Naidu, who conducted the post mortem examined and furnished P 4 the certificate. 4th is Jamedar Balaji who gave the F.I.R. and had the inquest also (P.5) witnesses 5,6,7 & 10(Kajji Madiah,Anche Madappa,Mallappa & Basappa) who were sleeping in the varanda along with the deceased Madappa that night were awakened by the noise and saw the accused with the pounder standing closely to his father(the deceased) who was bleeding in the nose,mouth and left ear at the time. Evidently the deceased was hit on his hea near left temple and injured by the accused with the pounder he had in his hands, The stains on the pounder also are said to be that of mammalion blood(P.3) Witnesses 8 & 9 Erappa and Paravata are brother and wife of the deceased who went rather late and saw deceased bleeding and lying senseless and the accused detained there with the pounder.

4. The retired Sub Assistant Surgeon Mr.Muttasami who treate the deceased and who was examined by Mr.Subba Rao was not examined now as his wherewabouts is not known. His evidence read with that of P.W.3 Sub Assistant Surgeon and the Post Mortem certificate clearly shows that Sottappana Honnaiana Madappa who was hal and healthy died of the fracture of the skull and its consequences.

5. The accused was charged under section 302 I.P.C. He says that he did not commit the crime and he had no defence also. He is said to have been raving even at the time of committing the crime. However he is committed to the Cpurt of Sessions to stand his trial there.

Sd/- A.Krsihnaswami Iyengar,
Sub Division 1st Class Magistrate.

Deposition of witness No.1 for prosecution taken on this 1st day of February 1917. Age about 48,Name-Mr.K.Kesavachar,Barahmin by caste,Amildar of Nanjangud Taluk.

Examined by Mr.Seshagiri Rao,Prosecuting Inspector.

I have been Amildar,Chamarajanagar Taluk since September 1914 In this case Jamedar Balaji had reported the case and held the inquest. I conducted the further investigation. On 7-11-1915 at about 9 or 10 A.M.I received information that the accused killed his father while he was sleeping by means of a pestle or pounder. I asked the Sub Assistant Surgeon to the spot and I reached it in Santemarahalli by about 4 P.M. The inquest had been completed and the Sub Assistant Surgeon was inspecting or examining the body. I too saw the body, I went and inspected the place where he had been killed. It was in the house where the cattle are tied, just in front of the house where he(deceased) was living. I examined the Yelandur Sub Assistant Surgeon Mr.Muttasami,Basappa,Parvatamma, wife of deceased,Erappa,his brother,Chennaveerappa,a relation,and Gurubassappana Basappa and Made gowda on 9th November 1915. I examined Kajji Madia,Anche Madappa,Mallappa and Puttasamia. On 13th November I received the post mortem certificate in which he had stated that the death was due to the fracture of the skull and its consequences, The Jamedar had arrested the accused. The accused was caught hold of while in act by Mallappa. The accused feigned madness. As he was said to have heard Puranam and then gone to sleep and subsequently committed the crime I suspected him. However I should charge sheet on 15-11-15. The accused was screaming and acting voilently when he was tied and restrained by his people No.1 is the pounder said to have been used in killing the deceased The Chemical Examiner has certified that it contained mammalion blood P.1 is the report.

Accused did not cross examine the witness saying that he would engage a pleader.

Read Over and admitted correct.

(Translated)

Sd/- A.Krsihnaswamy Iyengar,

G. R. S. VI—G/32]

SUBJECT.....

Diary No. of letter replied to——

General and Revenue Secretariat

( )

, *the* 191

Date of issue 7/4

Signed by Mr Rice

Section C.to

File No. 180-90.

Serial No

No. 1889

To The Govt Advocate

With reference to
your letter no 289 D
12-3-21 requesting
sanction to move the
Chief Court for the transfer of the Mysore
Sessions Case no 19 of
1916-17 from the file
of the Sessions Judge,
Mysore, I am directed

over.

14/

to state that the main ground ~~that the Sessions Judge~~ had already expressed an opinion in that Case (in ~~reducing~~ reduced in) ~~favour of accused~~ transfer, viz, is not tenable as, if the ~~was not likely to change his opinion and take an unbiassed view of the Case~~, the Chief Court would have, while ~~reversing~~ reversing the order of acquittal, transferred the Case to some other Sessions Division. Under these circumstances Court do not ~~see the advisability~~ consider it necessary to set of getting the Case transferred to the file of the Sessions Judge, Bangalore.

if they apprehended that the Sessions Judge was not likely to take an unbiassed view of the case.

I am to add that.

~~I have &c~~

~~Registrar~~

For Registrar

List of enclosures.

Copied by

Examined by

~~Sessions~~ Memo No 3/21 dtd 21/3

Copy forwarded to the ~~Chief~~ Magistrate, Mysore

G. R. S. VI—G/32] 2/4 2. 0 1 2

SUBJECT.....

.....

.....

Diary No. of letter replied to——————

Section C 5

File No. 190-20.

Serial No. 3

General and Revenue Secretariat

( )

, *the* *191* .

No. G 18897 (1)

Date of issue 7/4

Signed by H' DS Stn

The Chief Magistrate, Mysore

Adverting to your letter no Roc 1318/J.20-21 dt 1-3-21 requesting the Govt Advocate to move the Chief Court for the transfer of the Mysore Sessions no 19 of 1916-17, Case from the file of the Sessions Judge, Mysore, to that of the Sessions Judge of Bangalore.

over.

I am directed to forward
herewith Copy of letter no
G 1869 ~~dated~~ 7/4/21
to the Govt. Advocate on
Mysore, and to ~~state~~ point out that in
~~that it was not a~~
proper Course for you was not
to have written to the
Govt. Advocate direct
in the matter ~~and that~~ but to have
~~Govt should have been~~
addressed for in the first
instance ~~who if they~~ for instructions
~~agreed with you would~~
~~have instructed~~ the
Govt. Advocate to file
the necessary application
for transfer

Yours &c

D. M
2/4

For Secy to Govt

List of enclosures.

Copied by

Examined by

EBS
6/3/21
2/3